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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,295	10/31/2003	Hikmat Hojeibane	CRD-5051	2568

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EXAMINER
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PELLEGRINO, BRIAN E

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

Application No.

10/699,295

Applicant(s)

HOJEIBANE ET AL.

Examiner

Brian E Pellegrino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 23, 25, 26, 30 and 31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22, 24, 27-29, 32 and 33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "*The present invention relates to*," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it should not include implied language. Correction is required. See MPEP § 608.01(b).

### ***Claim Objections***

Claims 17-19 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 17 fails to limit a previous claim since it depends from itself. Claims 18,19 depend from claim 17.

### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5,8,9,22,24,27-29,32,33 are rejected under 35 U.S.C. 102(e) as being anticipated by Huter et al. (6511496). Fig. 1 shows a prosthetic valve having an anchor structure ( tubular stent) on a balloon, which is attached to a catheter device that has a collar **40** proximal to the anchor. It is well known in the art that stents have first and second open ends. The collar is attached to a cantilever strut assembly **24** which has a membrane assembly **22** attached thereto that has a first open end and a second closed end. Huter discloses the structural frame may be made of metals or polymers, col. 4, lines 2-4. The membrane is made of synthetic material, col. 7, lines 45-49. Both the connecting member and the cantilever strut are "substantially straight". The use of "substantially constant diameter" or "substantially conical shape" is terminology of relative degree, which has no basis of comparison. For this reason, it is considered broad and relatively unlimited. It can be construed that element 26 can be a centering leg and provides means for indirectly and directly attaching the assembly.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Huter et al. '496 in view of Konya et al. (6368338). Huter et al. is explained supra. However, Huter fails to disclose the membrane material comprises a reinforcement fiber. Konya shows (Fig. 1) a filtering device. Konya also teaches that the filtering device can include reinforcement or structural fibers, col. 12, lines 23-31. It would have been obvious to

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one of ordinary skill in the art to use reinforcement fibers as taught by Konya with the membrane of Huter such that it strengthens the apparatus and prevents collapse.

Claims 6 and 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Huter et al. '496 in view of Quijano et al. (5500014). Huter is explained supra. However, Huter does not disclose the use of biological vein material for the membrane. Quijano et al. teach that venous graft material is used in prosthetic valve devices (col. 6, lines 6,7) and that tanning the material provides certain stiffness properties, col. 11, lines 22-25. It would have been obvious to one of ordinary skill in the art to use venous material as taught by Quijano et al. for the membrane of Huter et al. such that it provides a natural biological material that is sufficient to withstand the pressure of the blood flow in the patient since it is a natural material.

Claims 10,12-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huter et al. '496 in view of Alt et al. (5788979). Huter et al. is explained as before. However, Huter fails to disclose the structural frame or the membrane is coated with a therapeutic agent. Alt et al. teach that biodegradable polymer materials can be loaded with drugs or pharmaceutical agents (col. 4, lines 14-29) to treat an area where a prosthesis (col. 8, lines 57-60) is implanted. It would have been obvious to one of ordinary skill in the art to use a biodegradable polymer with a drug as taught by Huter et al. with the device of Alt et al. such that it prevents restenosis or thrombosis from occurring.

***Response to Arguments***

Applicant's arguments filed 11/9/05 have been fully considered but they are not persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the anchor structure is directly attached via the connecting member to the collar) are not recited in the rejected claim(s). Applicant also argues that balloon portion carrying the anchoring structure is not attached to the membrane. However, as mentioned above, it is noted that Applicant is relying on (i.e., that the anchor structure is directly attached to the cantilever valve) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In response to applicant's argument that there is no suggestion to combine the Huter and Konya references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Konya clearly illustrates in the drawings structural strands along the longitudinal length that provide support to the membrane. Both Huter and Konya are in the same filed of endeavor and involve membranes or filters for capturing blood. Thus, it would have been obvious to provide structural strands as taught by

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Konya with the membrane of Huter. It is the Examiner's position that the other references are also properly combinable with the Huter reference as motivations were provided.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E Pellegrino whose telephone number is 571-272-4756. The examiner can normally be reached on M-Th (6:30am-4pm) and alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TC 3700, AU 3738

**BRIAN E. PELLEGRINO**  
**PRIMARY EXAMINER**

*Brian Pellegrino*